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13/Appeal Brief
9-24-02

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Re. Appellant.:	Kenneth R. LaBounty, et al
Serial No.:	09/524,904
Filed:	March 14, 2000
For:	HEAVY-DUTY DEMOLITION APPARATUS WITH REPLACEABLE TIP AND ROTABLE CROSS BLADE
Examiner:	William Hong
Group:	3725
Confirmation No.:	8475
Attorney:	Gerald E. Helget
Attorney Docket No.:	33144.18
Additional Fees:	Charge to Deposit Account 02-3732

BOX AF
Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

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TRANSMITTAL COVER LETTER

Enclosed for filing, please find the following:

1. An original and two copies of Applicant's Appeal Brief (5 pages) and Appendix (6 pages);
2. A check in the amount of $160.00 for the filing fee; and
3. Postcard receipt.

Respectfully submitted,

Dated: 10 Sept 02

By _____
Gerald E. Helget (Reg. No. 30,948)
Briggs and Morgan, P.A.
2400 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
Telephone: (612) 334-8480

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By _____
Date 10 Sept 02

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Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

APPLICANT'S APPEAL BRIEF

Now comes the applicant by his attorney and submits three copies of this Appeal Brief, in furtherance of the Appeal, the notice of which was filed at the United States Patent and Trademark Office on December 6, 2001.

CERTIFICATE OF MAILING

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By _____
Date 10 Sept 02

I. REAL PARTY IN INTEREST

The real party in interest is the assignee of U.S. Patent application no. 09/524,904, Genesis Equipment and Manufacturing Co., Inc.

II. RELATED APPEALS AND INTERFERENCES

Applicant is unaware of any related appeals or interferences.

III. STATUS OF CLAIMS

The claims on appeal are claims 1-12, 14-17, 19 and 20. All of the claims on appeal have been rejected.

IV. STATUS OF AMENDMENTS

No amendments have been made after final rejection.

V. SUMMARY OF THE INVENTION

The invention is a heavy-duty demolition apparatus 10 (page 5) for attachment to the boom structure and hydraulic system of an excavator, comprising:

a) a lower jaw 12 (page 5) and an upper jaw 14 (page 5) and pivot means 16 (page 5) interconnecting the jaws together, means for attachment 18 (page 5) to the boom structure of the excavator, the upper jaw 14 having an upper shear blade 34, 35 (page 5), the lower jaw 12 having at least one lower shear blade 36, 37 (page 5), the lower jaw 12 also having a rigid guide blade 48 (page 5) lying along the lower shear blade and in spaced relation therewith, the outer ends 50, 52 (page 5) of the shear blade and guide blade being adjacent each other, and a tie plate 56 (page 6) securing the outer ends of the lower shear blade and the guide blade together, further comprising an open slot 58 (page 6) between the lower shear blade and the adjacent guide blade to receive the upper shear blade therein, and the upper jaw having means for attachment 30 (page 5) to the hydraulic system of the excavator for closing and opening the upper jaw relative to the lower jaw; the lower jaw and upper jaw shearing a workpiece when the upper jaw is closed upon the lower jaw; and

b) an indexable, rotatable cross blade 60 (page 6) removably mounted to the inside of the tie plate substantially transverse to the lower shear blade and to the guide blade,

the cross blade having four cutting surfaces 62a, 62b, 62c, 62d (page 6) for successive exposure and shearing.

VI. ISSUES

1. Are claims 1-12, 14-17, and 19-20 unpatentable under 35 U.S.C. 103(a) over Sederberg in view of Ramun?

VII. GROUPING OF CLAIMS

The rejected claims in this application do not stand or fall together.

Claim 17 adds a further limitation of a cross blade forming a first angle between one and thirty degrees with the tie plate.

Each of these claims should be individually considered in light of this prior art for the reason that the respective claim language differs sufficiently as to require separate consideration.

VIII. ARGUMENT

Claims 1-12, 14-17 and 19-20 under 35 U.S.C. 103(a) are not unpatentable over Sederberg in view of Ramun.

Applicant maintains that the Examiner has not established a *prima facie* case of obviousness. The Examiner bears the initial burden of presenting a *prima facie* case of obviousness.[1] If the Examiner fails to establish a *prima facie* case, the rejection is improper and will be overturned.[2] "A *prima facie* case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art."[3]

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to

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[1] *In re Rijckaert*, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993).
[2] *Id.*
[3] *Id.*

combine reference teachings.[4] Second, there must be a reasonable expectation of success.[5] Finally, the prior art reference (or references when combined) must teach or suggest all claim limitations.[6] The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure.[7]

The Examiner has not established a *prima facie* case of obviousness because the prior art relied upon does not disclose, suggest, or render obvious the claimed invention, either individually or when combined[8], because the references to not teach or disclose all claimed limitations.

As to claim 1, Sederbeg does not teach an indexable, rotatable cross blade removably mounted to the inside of the tie plate substantially transverse to the lower shear blade and to the guide blade, the cross blade having four cutting surfaces for successive exposure and shearing. Furthermore, the boss 98 of Sederberg would prevent the cross blade 94 from being rotated to a position that would expose two of the cutting surfaces. Clearly, the construction of Sederberg teaches away from a cross blade with four cutting surfaces that can be rotated for successive exposure and shearing. There would be, therefore, no motivation to combine the Ramun reference with Sederberg.

Claim 1 is therefore allowable.

Claims 2-11 contain additional elements or limitations beyond allowable claim 1 and are also allowable.

Claim 12 is allowable for the reasons given above in relation to claim 1.

Claims 14-16 contain additional elements or limitations beyond allowable claim 1 and are also allowable.

Appellant argues that claim 17 does not stand or fall together with the other claims of this group. Claim 17 is separately allowable because the references do not teach or suggest a

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[4] Manual of Patent Examining Procedures, §2143
[5] *Id.*
[6] *Id.*
[7] *Id.* (emphasis supplied)
[8] *Rijckart*, 28 USPQ2d at 1957

cross blade forming a first angle between one and thirty degrees with the tie plate. Sederberg in fact teaches away from such a construction at col. 5 line 57 to col. 6 line 4, where it is stated that the outer end wall 32 and other components (which would include the cross blade 94) "extend in planes parallel to the reference plane defined by the proximal end shoulder 58." No other construction is disclosed. Since Sederberg requires the cross blade to be parallel to the end shoulder 58 and thus parallel to the tie plate, it teaches away from Applicant's claimed construction wherein the cross blade is positioned at an angle to the tie plate 54. Furthermore, the boss 98 of Sederberg would not allow the cross blade to be positioned at an angle to the outer end wall 32 of the tie plate and still be seated firmly against the shim 96 and the inside surface of the outer end wall 32. See col. 6 lines 1-5, where it is taught that the cross cutter blade 94 is seated firmly on the boss 98 as well as against the shoulders 104 bounding the recess 92.

Claims 19-20 contain additional elements or limitations beyond allowable claim 17 and are therefore also allowable.

In view of the foregoing, Appellant asks the Board to overturn the Examiner's rejections and allow all claims.

Respectfully submitted,

Dated: 9/10/02

By _____
Gerald E. Helget (Reg. No. 30,948)
Nelson R. Capes (Reg. No. 37,106)
Briggs and Morgan, P.A.
2400 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
Telephone: (612) 334-8400

APPENDIX

1. A heavy-duty demolition apparatus for attachment to the boom structure and hydraulic system of an excavator, comprising:

(a) a lower jaw and an upper jaw and pivot means interconnecting the jaws together, means for attachment to the boom structure of the excavator, the upper jaw having an upper shear blade, the lower jaw having at least one lower shear blade, the lower jaw also having a rigid guide blade lying along the lower shear blade and in spaced relation therewith, the outer ends of the shear blade and guide blade being adjacent each other, and a tie plate securing the outer ends of the lower shear blade and the guide blade together, further comprising an open slot between the lower shear blade and the adjacent guide blade to receive the upper shear blade therein, and the upper jaw having means for attachment to the hydraulic system of the excavator for closing and opening the upper jaw relative to the lower jaw; the lower jaw and the upper jaw shearing a workpiece when the upper jaw is closed upon the lower jaw; and

(b) An indexable, rotatable cross blade removably mounted to the inside of the tie plate substantially transverse to the lower shear blade and to the guide blade, the cross blade having four cutting surfaces for successive exposure and shearing.

2. The heavy-duty demolition apparatus of claim 1, wherein the cross blade and the tie plate form a first angle therebetween.

3. The heavy-duty demolition apparatus of claim 2, wherein the first angle is acute.

4. The heavy-duty demolition apparatus of claim 3, wherein the first angle is between one degree and thirty degrees.

5. The heavy-duty demolition apparatus of claim 4, wherein the first angle is between one degree and twenty degrees.

6. The heavy-duty demolition of claim 5, wherein the first angle is about ten degrees.

7. The heavy-duty demolition apparatus of claim 1, further comprising primary and secondary lower shear blades. The primary blade lying closest to the pivot and being approximately twice as long as the secondary blade.

8. The heavy-duty demolition apparatus of claim 7, wherein each of the two lower shear blades has four cutting edges rotatably mounted on the lower jaw to successively bring each of the four cutting edges into position for shearing the workpiece.

9. The heavy-duty demolition apparatus of claim 1, further comprising two upper shear blades, each having four cutting surfaces.

10. The heavy-duty demolition apparatus of claim 1, the upper jaw further comprising a replaceable tip at the end of the upper jaw distal from the pivot means.

11. The heavy-duty demolition apparatus of claim 10, wherein the replaceable tip further comprises a dovetail portion interlocking with a mortise portion on a blade tip seat on the upper jaw.

12. A heavy-duty demolition apparatus for attachment to the boom structure and hydraulic system of an excavator, comprising:

(a) a lower jaw and an upper jaw and pivot means interconnecting the jaws together, means for attachment to the boom structure of the excavator, the upper jaw having an upper shear blade, the lower jaw having at least one lower shear blade, the lower jaw also having a rigid guide blade lying along the lower shear blade and in spaced relation therewith, the outer ends of the shear blade and guide blade being adjacent each other, and a tie plate securing the outer ends of the lower shear blade and the guide blade together, further comprising an open slot between the lower shear blade and the adjacent guide blade to receive the upper shear blade therein, and the upper jaw having means for attachment to the hydraulic system of the excavator for closing and opening the upper jaw relative to the lower jaw; the lower jaw and the upper jaw shearing a workpiece when the upper jaw is closed upon the lower jaw;

(b) an indexable, replaceable piercing and shearing tip removably mounted in a seat at the distal end of the upper jaw; further comprising an indexable, rotatable cross blade removably mounted to the inside of the tie plate substantially transverse to the lower shear blade and to the guide blade, the cross blade having four cutting surfaces for successive exposure and shearing.

14. The heavy-duty demolition apparatus of claim 13, wherein the cross blade and the tie plate form a first angle therebetween one and thirty degrees.

15. The heavy-duty demolition apparatus of claim 12, further comprising primary and secondary lower shear blades, the primary blade lying closest to the pivot and being approximately twice as long as the secondary blade.

16. The heavy-duty demolition apparatus of claim 12, wherein the replaceable tip further comprises a dovetail portion interlocking with a mortise portion on a blade tip seat on the upper jaw.

17. A heavy-duty demolition apparatus for attachment to the boom structure and hydraulic system of an excavator, comprising:

(a) a lower jaw and an upper jaw and pivot means interconnecting the jaws together, means for attachment to the boom structure of the excavator, the upper jaw having an upper shear blade, the lower jaw having at least one lower shear blade, the lower jaw also having a rigid guide blade lying along the lower shear blade and in spaced relation therewith, the outer ends of the shear blade and guide blade being adjacent each other, and a tie plate securing the outer ends of the lower shear blade and the guide blade together, further comprising an open slot between the lower shear blade and the adjacent guide blade to receive the upper shear blade therein, and the upper jaw having means for attachment to the hydraulic system of the excavator for closing and opening the upper jaw relative to the lower jaw; the lower jaw and the upper jaw shearing a workpiece when the upper jaw is closed upon the lower jaw;

(b) an indexable, rotatable cross blade removably mounted to the inside of the tie plate substantially transverse to the lower shear blade and to the guide blade, the cross blade having four cutting surfaces for successive exposure and shearing;

(c) an indexable, replaceable piercing and shearing tip removably mounted in a seat at the distal end of the upper jaw; and

(d) wherein the cross blade and the tie plate form a first angle therebetween between one and thirty degrees.

19. The heavy-duty demolition apparatus of claim 17, further comprising shear blades, one being a primary shear blade lying distal from the tie plate and the other being a secondary shear blade lying adjacent to the tie plate.

20. The heavy-duty demolition apparatus of claim 17, wherein the replaceable tip further comprises a dovetail portion interlocking with a mortise portion on the upper jaw.